Supreme Court, U.S.
FILED
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No. 08 –1348

In the
Supreme Court of the United States

Donald E. Railsback,
Petitioner

v.

The State of Washington,
Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Washington.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioners respectfully move this Court for an order (1) vacating its order of October 5, 2009 which denied the petition for writ of certiorari filed by petitioner on February 27, 2009, (2) granting the petition for writ of certiorari; and to reverse the conviction on the merits with or without oral arguments, or remand to the Washington State Supreme Court to schedule briefings and oral arguments on the merits. The grounds for rehearing are stated below.

REASONS FOR GRANTING REHEARING

I. Defendant Donald E. Railsback did not voluntarily, knowingly, and intelligently waive his right to appeal as required by the Washington State Constitution.

As will become very obvious, the order by the (unconstitutional - there is not lawful authority for such a position) Washington Supreme Court Commissioner (at page A-1 of the appendix of the original petition), misstates the law of the State of Washington in an effort to corruptly deny Mr. Railsback of his constitutional rights as alleged in the original petition to this court. Contrary to what the Commissioner wrote in his order, there was also

a hearing on a motion to reconsider in the superior court. To this date there has been no order entered on that motion, a further reason that there was never an appealable order in the lower court. The commissioner knew this fact and ignored it, all to continue the deception and corruption of the courts.

> As difficult as it might be to believe, those who control the courts of the State of Washington have conspired to deny Railsback of his constitutional rights in an effort to continue their unrestrained corruption of the courts in regards to petitioner Railsback. The actions taken by those individuals as stated in the original petition can lead to no other conclusion.

City of Seattle v. Klein, 161 Wn.2d 554 (2007) is the controlling case.

In Washington "The "right to appeal in all cases" is expressly guaranteed by our Washington Constitution. WASH. CONST. art. I, § 22. The only means by which such an individual constitutional right in Washington may be relinquished is by a voluntary, knowing, and intelligent waiver." "This is unlike the United States Constitution and those of many states that do not expressly provide this right.

City of Seattle v. Klein, 161 Wn.2d 554 (2007).

There was no such waiver by the defendant in this case so the defendant could not possibly have failed to timely appeal. Although Railsback filed an appeal,

even if he hadn't done so as of this date, it would still not be too late because the courts of Washington failed to comply with the requirements that would lead to a waiver of an appeal.

> "Waiver could most clearly be shown by a demonstration in the record that the trial judge questioned the defendant about his understanding of the appeal procedure and his intentions with regard to an appeal. *See, e.g., Koehn v. Pinnock*, 80 Wn.2d 833, 494 P.2d 987 (1972)." *Sweet*, 90 Wn.2d 282, 287. Cited in *Klein.*

> "The *Tomal* court also noted that inaction by the appellant may establish a valid waiver only when the appellant has been *informed* of the consequences of his or her conduct. *See id.* at 990. A trial judge may give notice to the defendant that absence or failure to comply with procedures may constitute a waiver of the appeal, but that was not done here. In short, there is no presumption of waiver. In fact, our case law mandates that waiver must be affirmatively proved by the State. *Id.*" (*State v. Tomal*, 133 Wn.2d 985, 988 948 P.2d 818 (1998) Cited in *Klein.*

> "Relinquishment (of right to appeal) by conduct is only constitutional once a defendant has been warned that he or she will waive this right if he or she engages in dilatory tactics. Any misconduct thereafter may be held to include

an implied request to proceed pro se and a waiver of counsel." *City of Tacoma v. Bishop*, 82 Wn. App 850, 859, 920 P.2d 214 (1996). Cited in *Klein*.

The right to appeal is a fundamental constitutional right that applies in "all cases" and may be waived only by a voluntary, knowing, and intelligent waiver. WASH. CONST. art. I, § 22; *see, e.g.*, *Kells*, 134 Wn.2d at 315. Due process requires notice of proscribed conduct so that there is a fair warning of potential penalties from a chosen course of action. *See, e.g.*, *In re Pers. Restraint of Powell*, 92 Wn.2d 882, 888, 602 P.2d 711 (1979). Cited in *Klein*.

The Washington court of Appeals recently reaffirmed *Klein*, "a defendant knowingly waives the right to (to appeal) when the court notifies him that certain proscribed conduct could case him to lose it." Washington Court of appeals, *State v. Tran*, 25503-4-II (03/03/2009).

The exact same circumstances exist in Railsback v. Washington. Unfortunately, those who control the courts of the State of Washington will make every attempt to corrupt the facts and the law in order to try and cover up their corruption.

II. Pursuant to Rule 15.2, all undisputed allegations of fact in the original petition must be accepted as true. Petitioner will leave it to the Court to review the original petition.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the original petition for certiorari, petitioner prays that this Court:

1. Grant rehearing of the order of denial, vacate that order, grant the petition for certiorari, and review the judgment below; or,
2. Grant certiorari and remand for oral arguments at the Washington State Supreme Court on the merits in light of City of *Seattle v. Klein*.

Respectfully submitted,

Donald E. Railsback
Pro Se for Petitioner
Date: October 27, 2009

CERTIFICATE OF PETITIONER

As pro se petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for purposes of delay and is restricted to the grounds specified in Rule 44.2.

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Donald E. Railsback